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10/528,566	12/14/2005	Reinhold Burr	016906-0385	6385
22428 7590 09/29/2009 FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007			EXAMINER MILLER, SAMANTHA A	
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The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte REINHOLD BURR, DIERTRICH KLINGLER and
KLAUS VOIGT

Appeal 2009-002693
Application 10/528,566
Technology Center 3700

Decided: September 29, 2009

Before JENNIFER D. BAHR, MICHAEL W. O'NEILL, and FRED A.
SILVERBERG, *Administrative Patent Judges*.

O'NEILL, *Administrative Patent Judge*.

DECISION ON APPEAL

Reinhold Burr et al. (Appellants) seek our review under 35 U.S.C. § 134 of the final rejection of claims 15-37. Claims 1-14 are canceled. We have jurisdiction under 35 U.S.C. § 6(b) (2002). Appellants' counsel presented oral arguments on Sept. 22, 2009. We REVERSE.

The Invention

The claimed invention is to an air inlet for a motor vehicle. In particular, the claimed invention is directed to the air-guiding device that divides the air into streams in which one stream has imparted a swirling motion thereupon. Spec. 3:15-19.

Claim 15, reproduced below, is illustrative of the subject matter on appeal.

15. An air inlet for a motor vehicle, comprising:
an air duct for supplying air;
a metering device; and
an air-guiding device comprising
 a plurality of subducts for dividing air in the air-guiding device,
 and
 an outflow region with an outer circumferential region and a
 middle region and,
wherein one subduct leads to the middle region and another subduct
leads to the outer circumferential region.

The Rejections

The Examiner rejected claims 15-27 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 5,101,883 to Kinmartin, issued April 7, 1992, and rejected claims 28-37 under 35 U.S.C. § 103(a) as unpatentable over Kinmartin in view of U.S. Patent 6,575,701 to Kamiya, issued Jun. 10, 2003.

Analysis

Anticipation based on Kinmartin

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987). To establish anticipation, every element and limitation of the claimed invention must be found in a single prior art reference, arranged as in the claim. *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383 (Fed. Cir. 2001). In other words, “there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention.” *Scrapps Clinic & Research Found. v. Genentech, Inc.*, 927 F.2d 1565, 1576 (Fed. Cir. 1991). The Examiner erroneously found the Kinmartin discloses an outflow region with an outer circumferential region and a middle region, wherein one subduct leads to the middle region and another subduct leads to the outer circumferential region, as called for in claim 15. None of the structures relied on by the Examiner are subducts that lead to either a middle region or an outer circumferential region as called for in claim 15. Reading defogger vents 46a, 46b as an outer circumferential region effectively reads “outer circumferential” out of the claim and is not preferred over one that reads gives it meaning. *See Merck & Co., Inc. v. Teva Pharmaceuticals USA, Inc.*, 395 F.3d 1364, 1372 (“A claim construction that gives meaning to all the terms of the claim is preferred over one that does not do so.”) Outer means being away from the center; while, circumferential means the perimeter of a circle. *See e.g., Merriam-Webster’s Collegiate Dictionary* 11th Ed., 2003. As such, the outflow region has a middle region and an outer

region that circularly surrounds that middle region. Kinmartin's defogger vents 46a, 46b do not circularly surround the vents 48a, 48b.

Obviousness based on Kinmartin and Kamiya

In order to address the limitation in claim 28 that one subduct has a coiled or elongated helical region, and the limitation in claim 33 that one of the subducts is configured to impart a spot action to the air at an exit of the air duct and another of the subducts is configured to impart a swirl to the air at the exit of the air duct, the Examiner proposes modifying "the air inlet of Kinmartin in view of the teaching of Kamiya." Ans. 7. The Examiner does not specify exactly how the air inlet is to be modified. It is not readily apparent nor has the Examiner cogently explained how placing a blower in a location within the assembly 10 of Kinmartin in which Kamiya's coiled passage 22 is one of a plurality of subducts would result in a faster and more efficient airflow than the arrangement of Kinmartin. Further, the Examiner's rationale of blowing "air within a vehicle passenger compartment in particular for an air heater arrangement faster and more efficient airflow" (Ans. 7), does not articulate sufficient reasoning with some rational underpinning to support the use of Kamiya's blower housing as a substitution for one of Kinmartin's channels 36a, 36b. "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006), *cited with approval in KSR*, 550 U.S. at 418. The substitution proposed by the Examiner does not strike us as being an obvious combination of prior art elements or a simple substitution of one known element for another, leading to predictable results, or any other

Appeal 2009-002693
Application 10/528,566

indicator of obviousness. Rather the extensive amount of modification needed is suggested nowhere in the cited art, and is born from the use of impermissible hindsight reconstruction in view of Appellant's Specification.

DECISION

The Examiner's decision to reject claims 15-37 is reversed.

REVERSED

mls

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